

# Response template

This form has been provided as a template for your response to the consultation paper, **Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose**. Use of this template is optional, but may help to guide your response. You do not need to answer every question, and you can choose to answer as many or as few questions as you like.

## Making a submission

Once you have completed your response, please email it to [NRAS Review Implementation Project Secretariat](mailto:NRAS.consultation@dhhs.vic.gov.au) <NRAS.consultation@dhhs.vic.gov.au>

or post your response to:

NRAS Review Implementation Project Secretariat  
Health and Human Services Regulation and Reform  
Department of Health and Human Services  
GPO Box 4057  
MELBOURNE VIC 3001

**Submissions are due by midnight, Wednesday 31 October 2018.**

## Publication of submissions

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If you have chosen to remain anonymous but would like to be advised of the outcome of the consultation, please provide your contact details below, and these will only be used for the purpose of the department contacting you to advise of the outcome of the consultation.

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## About you / your organisation

**What is your name / your organisation's name?**

National Aboriginal and Torres Strait Islander Health Worker Association

**Are you a:**

- Consumer of health services
- Registered health practitioner
- Employer of health practitioners
- Representative of a professional association
- Representative from a health regulator
- Other – please state: \_\_\_\_\_

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- Yes**, you may publish my submission, including my name/my organisation's name.
- Yes**, you may publish my submission anonymously (do not include my name).
- No**, my response is private and confidential.

**Would you like to be informed about the outcome of the consultation?**

- Yes**
- No**

**If you answered 'yes', please provide your contact details below.**

Name:	National Aboriginal and Torres Strait Islander Health Worker Association
Position/title (if applicable):	
Email:	policy@natsihwa.org.au

**Thank you for taking the time to make a submission.**

# Consolidated list of questions

## Governance of the National Scheme

### Section 3.1: Objectives and guiding principles – inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander Peoples

<p><b>1. Should the guiding principles of the National Law be amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law? What are your reasons?</b></p>	<p>Yes.</p> <p>Providing a consistent expectation of behaviour across all health professionals within the National Registration and Accreditation Scheme is important to ensure patient and public safety.</p> <p>Of interest is the requirement for health care professionals to provide safe and ethical health care in a manner that is sensitive and respectful to the cultural needs of clients. This is an extremely important inclusion into the National Law as a lack of cultural safety has been shown to be a barrier to Aboriginal and Torres Strait Islander Peoples accessing health care and to the recruitment and retention of Aboriginal and Torres Strait Islander health professionals as well as critical to clinical and patient safety.</p> <p>As well as providing culturally safe individual care for Aboriginal and Torres Strait Islander people, it is equally important to ensure and support the development of culturally safe health services. Embedding cultural safety across the workforce requires a systems approach where health service standards, curricula, health professional standards and all codes support cultural safety.</p>
<p><b>2. Should the objectives of the National Law be amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians? What are your reasons?</b></p>	<p>Yes.</p> <p>The National Registration and Accreditation Scheme is the COAG mechanism of ensuring public safety within the health system. As such it also needs to be about addressing health inequities as a fundamental element of a universal health care system.</p> <p>Many of the health disparities and disparities in health care access, experiences and outcomes between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians are due to institutional racism that has delivered discriminatory health care and poorer health outcomes, rather than addressing the inequities experienced by Aboriginal and Torres Strait Islander Australians.</p>

<p><b>3. Do you have other suggestions for how the National Scheme could assist in improving cultural safety and addressing health disparities for Aboriginal and Torres Strait Islander Peoples?</b></p>	<p>Yes. To enable health professionals to provide culturally safe practice, they need to be provided with regular and ongoing training as to what cultural safety is and how they can integrate cultural safety in to their professional practice.</p> <p>The National Scheme - through AHPRA - should facilitate access to and support for cultural safety training by creating and fostering an environment in which cultural safety is recognised and stipulated as a fundamental requirement for health professionals.</p>
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### Section 3.2: Chairing of National Boards

<p><b>4. Which would be your preferred option regarding the appointment of chairpersons to National Boards? What are your reasons?</b></p>	<p><b>Option 1:</b> No change – only a practitioner member may be appointed to the role of chairperson of a National Board.</p> <p>The effective functioning of a National Board requires leadership by a Chair with specialist knowledge, skills and expertise relevant to the profession. This is essential not only for sound oversight and governance of the regulatory functions of the National Board, but also gives the Chair credibility within their profession to provide leadership and to drive innovation and reform. This is particularly relevant for an emerging profession to support its workforce recognition, sustainability and optimal distribution and utilisation across the health system. A suitability qualified Board Chair who is a practitioner will possess a familiarity with their profession that is strategically advantageous.</p>
<p><b>5. If your view is that the role of chairperson should be reserved for practitioner members only, then how should circumstances be managed where there is no practitioner member willing or able to carry out the role, or where there is a need to appoint a non-practitioner for the good governance of the board?</b></p>	<p>If it is deemed that a community non-practitioner is required, it is recommended that this be explicitly defined as a time limited last option strategy. In this circumstance, a strategic succession plan should be required to support the recruitment of a suitably skilled and qualified practitioner into the role within a predetermined timeframe. The plan may need mentoring and professional development components to attract and support practitioners into the role. This is particularly important within a profession with a relatively small practitioner pool. Alternatively, time limited co-chairing arrangements could be</p>

	<p>considered whereby one co-chair is required to be a practitioner from the relevant profession.</p> <p>Should proposed <b>Option 3</b> be adopted and the National Law amended so that the Ministerial Council would be required to appoint a practitioner member to chair a National Board, except where there are extenuating circumstances, what comprises 'extenuating circumstances' must be explicitly defined and outlined as a last option strategy.</p>
<p>6. If your view is that the role of chairperson should be open to both community and practitioner members, then how should the need for clinical leadership be managed when a chairperson is required to speak authoritatively on behalf of the National Board?</p>	<p><b>Option 2</b> to amend the National Law to remove the requirement for the chairperson to be a practitioner member, allowing either a practitioner member or a community member to fill the role, is <b>not</b> supported.</p>

### Section 3.3: System linkages

<p>7. Are the current powers of National Boards and AHPRA to share and receive information with other agencies adequate to protect the public and enable timely action?</p>	<p>&lt;Please write your response here&gt;</p>
<p>8. Are the current linkages between National Boards, AHPRA and other regulators working effectively?</p>	<p>&lt;Please write your response here&gt;</p>
<p>9. Should there be a statutory basis to support the conduct of joint investigations with other regulators, such as drugs and poisons regulators and public health consumer protection regulators, and if so, what changes would be required to the National Law?</p>	<p>&lt;Please write your response here&gt;</p>

### Section 3.4: Name of the Agency Management Committee

<p>10. Should AHPRA's Agency Management Committee be renamed as the Australian Health Practitioner Regulation Agency (AHPRA) Board or the AHPRA Management Board? What are your reasons?</p>	<p>&lt;Please write your response here&gt;</p>
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## Registration functions

### Section 4.1: Registration improperly obtained – falsified or misleading registration documents

<p><b>11. Should the National Law be amended to enable a National Board to withdraw a practitioner’s registration where it has been improperly obtained, without having to commence disciplinary proceedings against them under Part 8?</b></p>	<p>&lt;Please write your response here&gt;</p>
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### Section 4.2: Endorsement of registration for midwife practitioners

<p><b>12. Should the provision in the National Law that empowers the Nursing and Midwifery Board to grant an endorsement to a registered midwife to practise as a midwife practitioner be repealed?</b></p>	<p>&lt;Please write your response here&gt;</p>
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### Section 4.3: Undertakings on registration

<p><b>13. Should ss. 83 and 112 of the National Law be amended to empower a National Board to accept an undertaking from a practitioner at first registration or at renewal of registration?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>14. Should the National Law be amended to empower a National Board to refuse to renew the registration of a practitioner on the grounds that the practitioner has failed to comply with an undertaking given to the board?</b></p>	<p>&lt;Please write your response here&gt;</p>

### Section 4.4: Reporting of professional negligence settlements and judgements

<p><b>15. Should the National Law be amended to require reporting of professional negligence settlements and judgements to the National Boards?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>16. What do you see as the advantages and disadvantages of the various options?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>17. Which would be your preferred option?</b></p>	<p>&lt;Please write your response here&gt;</p>

### Section 4.5: Reporting of charges and convictions for scheduled medicines offences

<b>18. Should the National Law be amended to require a practitioner to notify their National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction?</b>	<Please write your response here>
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### Section 4.6: Practitioners who practise while their registration has lapsed

<b>19. Should the National Law be amended to provide National Boards with the discretion to deal with a practitioner who has inadvertently practised while unregistered for a short period (and in doing so has breached the title protection or practice restriction provisions) by applying the disciplinary powers under Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7?</b>	<Please write your response here>
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### Section 4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date

<b>20. Should the National Law be amended to require a practitioner whose registration was suspended at one or more registration renewal dates, to apply to renew their registration when returning to practice?</b>	<Please write your response here>
<b>21. Noting the current timeframes for registered practitioner's applying to renew their registration (within one month of the registration period ending) and for providing written notice to a National Board of a 'notifiable event' (within seven days), what would be a reasonable timeframe for requiring a practitioner to apply to renew their registration after returning to practice following a suspension?</b>	<Please write your response here>

## Health, performance and conduct

### Section 5.1: Mandatory notifications by employers

<b>22. Should the National Law be amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional</b>	<Please write your response here>
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performance or health? What are your reasons?	
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### Section 5.2.1: Access to clinical records during preliminary assessment

<b>23. Should Part 8 Division 5 of the National Law (preliminary assessment) be amended to empower practitioners and employers to provide patient and practitioner records when requested to do so by a National Board?</b>	<Please write your response here>
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### Section 5.2.2: Referral to another entity at or following preliminary assessment

<b>24. Should Part 8 Division 5 of the National Law be amended to clarify the powers of a National Board following preliminary assessment, including a specific power to enable the National Board to refer a matter to be dealt with by another entity?</b>	<Please write your response here>
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### Section 5.3.1: Production of documents and the privilege against self-incrimination

<b>25. Should the provisions of the National Law about producing documents or answering questions be amended to require a person to produce self-incriminating material or give them the option to do so? If so:</b> <ul style="list-style-type: none"> <li>• Should this only apply to the production of documents but not answering questions or providing information not already in existence?</li> <li>• What protections should apply to the subsequent use of that material?</li> <li>• Should the material be prevented from being used in criminal proceedings, civil penalty proceedings or civil proceedings?</li> <li>• Should this protection only extend to the material directly obtained or also to anything derived from the original material?</li> </ul>	<Please write your response here>
<b>26. Should the provisions be retained in their current form? What are your reasons?</b>	<Please write your response here>

### Section 5.4.1: Show cause process for practitioners and students

<b>27. Should the National Law be amended to enable a National Board to take action under</b>	<Please write your response here>
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another division following a show cause process under s. 179?	
28. Should the National Law be amended to provide a statutory requirement for a National Board to offer a show cause process under s. 179 in any circumstance where it proposes to take relevant action under s. 178?	<Please write your response here>

### Section 5.4.2: Discretion not to refer a matter to a tribunal

29. Should the National Law be amended to empower a National Board to decide not to refer a matter to the responsible tribunal for hearing when the board reasonably forms the view that there are no serious ongoing risks to the public? If not, why? If so, then why and what constraints should be placed on the exercise of such discretion?	<Please write your response here>
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### Section 5.4.3: Settlement by agreement between the parties

30. Should the National Law be amended to provide flexibility for National Boards to settle a matter by agreement between the practitioner, the notifier and the board where any public risks identified in the notification are adequately addressed and the parties are agreeable? What are your reasons?	<Please write your response here>
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### Section 5.4.4: Public statements and warnings

31. Should the National Law be amended to empower a National Board/AHPRA to issue a public statement or warning with respect to risks to the public identified in the course of exercising its regulatory powers under the National Law? What are your reasons?	<Please write your response here>
32. If public statement and warning powers were to be introduced, should these powers be subject to a 'show cause' process before a public statement or warning is issued? What are your reasons?	<Please write your response here>

### Section 5.5.1: Power to disclose details of chaperone conditions

33. Should the National Law be amended to empower a National Board to require a practitioner to disclose to their patients/clients the reasons for a chaperone requirement	<Please write your response here>
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imposed on their registration? What are your reasons?	
<b>34. Should the National Law be amended to provide powers for a National Board to brief chaperones as to the reasons for the chaperone? What are your reasons?</b>	<Please write your response here>

### Section 5.5.2: Power to give notice to a practitioner's former employer

<b>35. Should the National Law be amended to enable a National Board to obtain details of previous employers and to disclose to a practitioner's previous employer(s) changes to the practitioner's registration status where there is reasonable belief that the practitioner's practice may have exposed people to risk of harm? If not, why? If yes, then why and what timeframe should apply for the exercise of these notice powers?</b>	<Please write your response here>
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### Section 5.6.1: Right of appeal of a caution

<b>36. Should the National Law be amended to enable a right of appeal against a decision by a National Board to issue a caution?</b>	<Please write your response here>
<b>37. Which would be your preferred option?</b>	<Please write your response here>

### Section 5.6.2: The rights of review of notifiers

<b>38. Should the National Law be amended to provide a right for a notifier (complainant) to seek a merits review of certain disciplinary decisions of a National Board? What are your reasons?</b>	<Please write your response here>
<b>39. Which would be your preferred option?</b>	<Please write your response here>
<b>40. If yes, which decisions should be reviewable and who should hear such appeals, for example, an internal panel convened by AHPRA or the National Health Practitioner Ombudsman and Privacy Commissioner, or some other entity?</b>	<Please write your response here>

## Offences and penalties

### Section 6.1: Title protection: surgeons and cosmetic surgeons

<b>41. Should the National Law be amended to restrict the use of the title 'cosmetic</b>	<Please write your response here>
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surgeon'? If not, why? If so, why and which practitioners should be able to use this title?	
42. Should the National Law be amended to restrict the use of the title 'surgeon'? if not, why? If so, why and which practitioners should be able to use such titles?	<Please write your response here>

## Section 6.2: Direct or incite offences

43. Are the current provisions of the National Law sufficient to equip regulators to deal with corporate directors or managers to direct or incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct?	<Please write your response here>
44. Are the penalties sufficient for this type of conduct? Should the penalties be increased to \$60,000 for an individual and \$120,000 for a body corporate, in line with the increased penalties for other offences?	<Please write your response here>
45. Should there be provision in the National Law for a register of people convicted of a 'direct or incite' offence, which would include publishing the names of those convicted of such offences?	<Please write your response here>
46. Should the National Law be amended to provide powers to prohibit a person who has been convicted of a 'direct or incite' offence from running a business that provides a specified health service or any health service?	<Please write your response here>

## Section 6.3.1: Prohibiting testimonials in advertising

47. Is the prohibition on testimonials still needed in the context of the internet and social media? Should it be modified in some way, and if so, in what way? If not, why?	<Please write your response here>
48. Which would be your preferred option?	<Please write your response here>

## Section 6.3.2: Penalties for advertising offences

49. Is the monetary penalty for advertising offences set at an appropriate level given other offences under the National Law and community expectations about the seriousness of the offending behaviour?	<Please write your response here>
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## Information and privacy

### Section 7.1: Information on the public register

<p><b>50. Is the range of practitioner information and the presentation of this information sufficient for the various user groups?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>51. Should the National Law be amended to expand the type of information recorded on the national registers and specialist registers?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>52. What additional information do you think should be available on the public register? Why?</b></p>	<p>&lt;Please write your response here&gt;</p>
<p><b>53. Do you think details, such as a practitioner's disciplinary history including disciplinary findings of other regulators, bail conditions and criminal charges and convictions, should be recorded on the public register? If not, why not? If so:</b></p> <ul style="list-style-type: none"> <li>• What details should be recorded?</li> <li>• What level of information should be accessible?</li> <li>• What should be the threshold for publishing disciplinary information and for removing information from a published disciplinary history?</li> </ul>	<p>&lt;Please write your response here&gt;</p>
<p><b>54. Should s. 226 of the National Law be amended to:</b></p> <ul style="list-style-type: none"> <li>• broaden the grounds for an application to suppress information beyond serious risk to the health or safety of the registered practitioner?</li> <li>• require or empower a National Board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence?</li> <li>• enable National Boards not to record information on, or remove information from, the public register where a party other than the registered health practitioner may be adversely affected?</li> </ul>	<p>&lt;Please write your response here&gt;</p>

## Section 7.2: Use of aliases by registered practitioners

<b>55. Should the National Law be amended to provide AHPRA with the power to record on the public registers additional names or aliases under which a practitioner offers regulated health services to the public?</b>	<Please write your response here>
<b>56. Should the public registers be searchable by alias names?</b>	<Please write your response here>
<b>57. Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?</b>	<Please write your response here>
<b>58. If aliases are to be recorded on the register, should there be provision for a practitioner to request the removal or suppression of an alias from the public register? If so, what reasons could the board consider for an alias to be removed from or suppressed on the public register?</b>	<Please write your response here>
<b>59. Should there be a power to record an alias on the public register without a practitioner's consent if AHPRA becomes aware by any means that the practitioner is using another name and it is considered in the public interest for this information to be published?</b>	<Please write your response here>

## Section 7.3: Power to disclose identifying information about unregistered practitioners to employers

<b>60. Should the National Law be amended to enable a National Board/AHPRA to disclose information to an unregistered person's employer if, on investigation, a risk to public safety is identified? What are your reasons?</b>	<Please write your response here>
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## Other comments

<Do you have any other comments to make about these proposals?>